IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1044 of 2005
with
CRIMINAL MISC. APPLICATION No.12429 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SITABEN GOVABHAI DESAI (RABARI),W/O GOVABHAI NAGJIBHAI RABAR - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR MG NAGARKAR for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,
MR JB PARDIWALA for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 19/10/2005

ORAL JUDGMENT

1. On 21.9.2005, this Court has passed the following order:

1.This Court, on 9.8.2005, had passed the following order:

> *1.Upon hearing Mr.Nagarkar for the petitioner and Mr.A.D.Oza, Ld.PP for the State, when the matter was called out in the first sitting, the Ld.PP was called upon to submit the report to this court regarding the steps which have been taken by the State in connection with the incident of death of one of the prisoners in jail who was in judicial custody as an undertrial prisoner. In the second sitting, when the matter is taken up, Mr.A.D.Oza, Ld.PP has submitted that the FIR is registered vide C.R.No. 327/05 with the Sabarmati Police Station and the investigation is going on. Mr.Oza also submitted that upon prima facie material, certain officials of the jail are placed under suspension and the further inquiry is under contemplation. Mr.Oza also submitted that the Addl.I.G(Prisons) has passed the order on 8.8.05 whereby the SRP is deployed for protecting the safety of the in-mates of jail and for protection of the husband of the petitioner, namely, Shri Gava Rabari and the SRP is instructed specifically for such purpose.*
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> *2.It deserves to be recorded that when the custody of any prisoner is with the State, or the custody of any under-trial prisoner is assigned to the State by the court, as an under-trial prisoner, and is in judicial custody, it is the bounden duty of the State to ensure that proper care of safety of the prisoner is taken. In the incident in question, it, prima facie, appears that norms for basic maintenance of safety of prisoners are ignored which has resulted into the present incident. It, prima facie, appears that unless there is hopelessly callous approach on the part of jail authorities, and also the officials involved therein, the weapon could not have been brought inside the jail, and such an unfortunate incident could not have happened. It also deserves to be recorded that there are other matters pending*

with this court relating to keeping the prisoners practically three times the capacity inside the barrack, and there is also matter pending with this court where the prisoner has lost his life inside the jail, but paid no compensation, whatsoever.

3. *Therefore, before this court considers the matter further, it is hereby directed that the investigation in connection with the complaint vide C.R.No.327/05 shall be carried out by the police officer not below the rank of Deputy I.G. The I.G(Prisons) shall pass necessary orders entrusting the investigation within 48 hours. The gist of the outcome of investigation shall be produced before this court in a confidential cover. As and when the custody of the husband of the petitioner is required for investigation the investigating officer shall be at liberty to get the same, but the same shall be intimated to his higher officer prior to taking the custody outside the jail and after the investigation is over as and when the custody is returned same shall also be accordingly written. The aforesaid shall be in addition to the procedure to be followed for interrogation of under-trial prisoner who is in judicial custody.*
4. *The Secretary, Home Department of the State Govt as well as the Inspector General of Police shall report to this court regarding the measures already taken and to be taken for ensuring the safety of the prisoners inside the jail and also for maintenance of human atmosphere inside the jail with a view to rule out the possibility of exploitation by the prisoners inter se. Such report shall be filed on or before 23.8.05.*
5. *SO to 24.8.05 for passing further orders.*
   To be listed in the first board.
   Office to give copy to the Ld.Public Prosecutor for compliance.

2. *Thereafter, as the investigation was ordered, Shri P.K.Jha, Additional Commissioner of Police, who*

was entrusted with the investigation has placed on record the report and after considering the said report, on 24.8.2005, this Court had passed the following order:

1. *In pursuance of the order passed by this Court on 9.8.2005, Mr.Kogje, learned APP has placed on record the report by Shri P.K.Jha, Additional Commissioner of Police, who was entrusted with the investigation. The perusal of the report, more particularly after para 12 onwards, from sub-para 1 to 6, prima facie shows very serious infirmities and unexpected and undesired atmosphere prevailing inside the jail. The affidavit filed on behalf of the jail authority, more particularly the details showing measures already taken and are to be taken for ensuring the safety of the prisoners inside the jail and also for maintenance of humane atmosphere inside the jail, prima facie appears to be a rosy picture as against the report of the Investigating Officer.*
2. *As observed earlier, while enforcement of law this Court is equally concerned with the safety of the prisoners inside the jail, including by exclusion of illegal or undesired harassment and the humane atmosphere. The Registrar of the High Court shall keep the report in sealed cover until the investigation is completed. However, the copy of the report of the Additional Commissioner of Police dated 24.8.2005 and more particularly the gist stated after para 12 onwards shall be forwarded by him to the Secretary, Home Department of the State. It is further directed that the Secretary, Home Department of the State, may be in consultation with I.G. (Prison) or independently, may place on record by way of affidavit stating the positive steps, which the State Government is contemplating to cure the infirmities shown in the jail administration in the report of the aforesaid officer. If the explanation is not found to be satisfactory or if this Court finds that no proper steps are being taken by the State Government itself through its on department,*

the Court may also consider the matter for appointing a committee or other such modalities for removal of such infirmities and also for the other aspects pertaining to the safety and the humane atmosphere inside the jail. Such report shall be submitted within a period of two weeks from today. If the affidavit as indicated earlier is not filed, then in that case Secretary, Home Department shall personally remain present on the next date i.e. 14.9.2005 at 2.15 p.m.

3. *It is clarified that as the major portion of the investigation is over and conducted by the Officer himself, in case of necessity, it would be open to such Officer to take assistance of any other Police Officer, but not below the rank of IPS cadre.*
4. *The learned Counsel appearing for the petitioner as well as the learned APP for the State have prayed and consented for treating the matter as part-heard as substantial time is invested. I find that without there being specific order by the Hon'ble the Chief Justice on administrative side, such prayer may not be granted. Hence, office to place the matter before the Bench as may be ordered by the Hon'ble the Chief Justice on administrative side.*
5. *Office to give copy of this order to Mr.Kogje, learned APP for compliance.*

3. *The pertinent aspect is that in the report, at para 12 onwards, it was stated by the Additional Commissioner of Police, who investigated into the matter as under:*

> *"12. Accused of Bank Fraud offence are holding property running to crores of rupees and such property is being transferred in the name of other person by the accused by remaining in jail. And the work of transferring this property is being carried*

out by Gova Rabari, the investigation of which is going on. And till date huge amount of Rupees Fifty Lakhs seems to be taken by Gova Rabari gang for these sale and purchase of land deals.

The above irregularities was going on in the jail seems to get necessary support from the jail staff and jail authority by their active connivance and getting a cut in the money guaranteed by there activities.

Apart from this, the following irregularities has also been revealed and found to be going on in the central jail during investigation. For that also deep and detailed investigation is required to be carried out.

1. In the jail there are different notorious gangs. They carry out criminal activities in and outside the jail e.g. Gentia Gang, Gova Gang, Wahab Gang, Bhai Thakur Gang, Godhra carnage Gang also due to the inefficiency of the jail staff and activity of the prisoners and the attitude of the jail authority to ignore such criminal activities being

carried out by the prisoners in the jail and in the absence of putting these activities on record or staking of stringent steps against the prisoners, the authority of the jail administration seems to be non-existent. This scenario may lead to intara and inter gang feuds in the jail premises. This may also lead to clashes between the gangs on the communal basis and may lead to large scale violence in near future. There is likelihood of riots being broken out in the jail between separate gangs with regard to the extortion and protection money and there is all likelihood of communal riots taking place broken out in the jail between the Hindu and Muslim gangs.

2. As per the instruction issued by Additional D.G. (Prison) to jail staff not to keep any weapon by them have led to no control over the prisoners.

3. It has been found that Charas, Wine, Tablets of Nitrous-10 (a type of

drug used for medicinal purpose), Brown Sugar and other intoxicating items are easily available , sold and are being consumed in the jail.

4. For different types of illegal facilities to the prisoners the prices are being openly quoted and charged, as illegal gratification. It has been revealed that following was the going rates for some of these facilities to be paid by the prisoners (1) for shaving Rs.200 per month; (2) For allowing to eat their own Milk and Bread Rs.100 to 300 per month; (3) Rs.500 for getting admitted in the dispensary of the jail; (4) Rs.1,200 to Rs.1,500 to the Jail Doctor for sending the prisoner to Civil Hospital; (5) Rs.10,000/- to Rs.15,000/- to the Civil Doctor for admitting the prisoner in the Civil.

5. The activity of gambling is constantly going on in the jail by giving "Haftas" to the officers in the jail. If the Jail Staff try to stop any

of the above activity, then the prisoners have beaten up the jail staff. Such beating of Jail Staff was reported in the recent past and are on the police record. As a result of which the staff got fed up and demand immediate transfer and want to be shifted to other jails.

6. The Sabarmati Jail is very crowded and more than three times more than its capacity about four thousand prisoners are lodged in this jail which makes it impossible to keep the jail administration under control.

This is only few facts which was revealed during the course of investigation of the murder. But a separate inquiry by competent authority can reveal the full facts of the situation in the Jail. The I.O., has only concentrated on the investigation of the murder, and supplementary facts which came to his knowledge has been put here without any extra effort to find out the irregularity in the jail

and has not tried to fix any responsibility on individual staff as it was not his charter of job assigned to an Investigating Officer of a crime of murder."

4.It appears that thereafter since this Court directed the Secretary, Home Department of the State, may be in consultation with the I.G. (Prison) or independently calling upon the State for the proposed positive steps which the State Government is contemplating to cure the infirmities shown in the jail administration. Mr.I.P.Gautam, Secretary, Government of Gujarat filed affidavit dated 9.9.2005. The said affidavit of the Secretary, Home Department was considered by this Court and on 14.9.2005, the following order was passed:

1. *The affidavit was submitted by the Secretary (Transport & Jail), Home Department, State of Gujarat, which is taken on record and considered. Prima facie the explanation or the steps which are proposed or taken in response to the report of the Additional Commissioner of Police, Ahmedabad are not satisfactory. I would have considered the matter for giving further direction.*
2. *However, Mr.Kogje, learned APP submits that some time may be granted to apprise the concerned Officer and the Government may*

itself come out with some positive suggestion.

3.Hence, S.O. To 21.9.2005.

5.When the matter is taken up today, no suggestion has come forward from the State Government taking positive view of the matter, except the letter by the Under Secretary of the Government of Gujarat that the matter is under active consideration of the Government for constitution of a high-level Committee. It deserves to be recorded that there is no constitution of State Human Rights Commission for Gujarat State.

6. It appears that with a view to consider the question for corrective measures in jail administration, keeping in view the past incident which is referred to in the petition as well as the report of the Officer who has investigated into the matter, it would be proper to refer to certain abstracts of the Authors of certain books and certain material published after undertaking the study of jail administration instead of appointing the Committee for such purpose. In the book titled ***"Administration of Criminal Justice – the Correctional Services", edited by Shri N.K.Chakrabarti,*** *while considering the question of*

corrections under the Prisons Act and the evaluation of corrections under the Prisons Act, at page 39, the learned Author has mentioned as under:

> *"Segregation and correction of prisoners happen to be the main objective of the contemporary prison administration. Hence there should be initial classification of prisoners by a committee of experts comprising of the psychologist, psychiatrist sociologist as well as the custodial and correctional officers of the district. The Committee may follow the broad classification pattern by separating the prisoners to be socially conditioned and individualised criminals. Both the types should be strictly separated from each other. This is to be followed by treatment programmes. Under trials prisoners in no way should be allowed to stay with convicts. (Emphasis supplied).*

7.In the book titled ***"Criminal Law and Criminology" by K.D. Gaur*** *at page 373, under the head of* ***Prison Reforms*** *the relevant comment of the Author is as under:*

"Grievance Deposit Box be kept in all jails and access to it should be allowed to all prisoners.

District Magistrates and Sessions Judges should visit jails periodically within their respective court jurisdiction and afford effective opportunities for ventilating grievances and take suitable remedial measures."

8.In the book titled ***"Criminal Justice" by K.I. Vibhute*** *at page 148, under the head of* ***Current Correctional Philosophy****, at item No.9 the Author has commented as under:*

"9. Implementation of human rights initiatives in prisons, as enumerated by Justice V.R. Krishna Iyer in ***Sunil Batra (1) v. Delhi Administration,*** *are based on three principles, namely, maintaining human dignity (a person in prison does not become a non-person); rights of prisoners, and needs of special categories of prisoners (like, women, juveniles, and undertrials)."*

9.It further appears that all prisoners may be

convict or under trial prisoners, deserve to be classified separately considering the gravity of the punishment already imposed or may be imposed. There is general opinion of the experts that under no circumstances under trial prisoners should be allowed to be kept with the prisoners who are convicts. The same can be achieved only if there is separate hierarchy for supervision of the area/jail for the under trial prisoners and for the convict prisoners. The appropriate mechanism also deserves to be devised for maintenance of the complaint box and attending to the complaints. It is also required that the jails are periodically checked by the Judicial Officer with a view to see that not only the Rules are properly observed for maintenance of the jails and the conditions of the prisoners, but a surprise check is also called for. It also appears that the access by the Press/media to the jail should be permitted with a view to see that the truth may come out, in case there is any covering up operations either by the Jail Administration itself or by the prisoners

themselves, but such access by the Press deserves to be regulated/controlled in a manner which may not hamper the smooth functioning of the jail administration. At the same time care is required to be taken to see that there is no misuse of any information which may be derived or received by the Press resulting into creating law and order problem inside the jail. In any case, if the Press is to act with all responsibility with a view to trace the truth inside the jail, more particularly for observance of the strict rule of discipline and the maintenance of human atmosphere inside the jail, the same would be encouraged in a country where the democracy is prevailing.

10. In view of the aforesaid observations, it deserves to be recorded that this Court is inclined to issue following directions:

(a) After classification of the prisoners into separate categories of male, female and juvenile, there will be general classification of all prisoners into two categories; one category of the convicted prisoners and the another of

the under-trial prisoners.

(b) Under no circumstances, the under-trial prisoners shall be kept with the convicted prisoners and there will be absolute separation of under-trial prisoners and convicted prisoners;

(c) The State shall set up two separate hierarchies for supervision of the jails/areas for the under-trial prisoners and for convicted prisoners. The staff of jail authority, its management and functioning shall altogether be separated;

(d) Even amongst the under-trial prisoners and convicted prisoners, there will be inter se classification on the basis of punishment for the alleged offence or offence committed as the case may be, as under:

(i) where the punishment is upto three years or the actual punishment imposed of three years.

(ii) where the punishment is for

3 (three) to 7 (seven) years of the alleged offence/offence committed.

(iii) where the punishment is for 7 (seven) to 10 (ten) years for the alleged offence/offence committed.

(iv) where the punishment is for more than 10 (ten) years but upto 14 (fourteen) years for the alleged offence/offence committed.

(v) where the punishment is for more than 14 (fourteen) years for the alleged offence/offence committed.

(e) The efforts shall be made by the Jail Administration to see that as far as possible the under-trial prisoners or the convict, as the case may be, shall be kept with the prisoner of the same class separately, as referred to hereinabove and in case of non-availability of space such under-trial prisoners or the convict, as the case may be, shall be kept with the prisoners

in the next inter se class, in the serial order as referred to above.

(f) Two separate, one for administration and another for physical harassment, complaint boxes shall be kept inside the common place of all jails, where the prisoners can have easy access. Just below the complaint box, the stationery/paper and pen shall also be made available to all prisoners.

(g) The complaint box for maintenance of the administration as well as for the complaint box for physical harassments, both shall be under the direct control and lock and key of the learned District Judge of the area in which the jail is situated.

(h)In case the administrative complaint is received, the same shall be forwarded by the learned District Judge to the concerned Officer of the State Government not below the rank of Dy. Secretary and after receipt of the said complaint, corrective measures shall be

taken and the report shall accordingly be made to the learned District Judge within a period of two months from the date of receipt of the said complaint. In absence of any report, it would be open to the learned District Judge to take appropriate action against the concerned Officer of the Jail whose action is complained about inside the jail.

(i) So far as the complaints for physical harassment are concerned, the learned District Judge shall get the inquiry conducted by the Officer not below the rank of Chief Judicial Magistrate and the report shall be called for by the learned District Judge within a period of three months from the date of entrusting such inquiry. Copy of such complaint shall also be forwarded to District Legal Aid Authority for participation at the stage of inquiry, if it is so desired by the concerned prisoner, may be convict or

under-trial prisoner. In the matter of complaint for custodial death inside the jail, immediate action shall be directed by the learned District Judge within 48 hours from the date of receipt of such complaint. It would also be open to the learned District Judge to entrust the inquiry to the Officer whom he may find suitable for such purpose.

(j) After the report is received by the learned District Judge, the same shall be forwarded to the Committee which is appointed due to non-availability of the Human Rights Commission in the State or the State Human Rights Commission, as the case may be, for appropriate action.

(k) Minimum one routine check up and one surprise check of each jail within the District shall be made by the learned District Judge and it would also be open to the learned District Judge to entrust such checking to the Officer not below the rank of Joint District Judge

in case the jail is situated at a place other than the District Head Quarters.

(l) Lenient access by the Press/media to the jail shall be permitted after taking formal permission on administrative side from the learned District Judge of the concerned District. In a matter where during the visit by Press any serious infirmities are detected by the Press, the reporting thereof shall be made by the Press to the learned District Judge and after getting formal permission on administrative side, the Press shall be at liberty to publish the said material.

11. The respondent State Government shall report to this Court as to why the aforesaid directions should not be finally issued and its compliance be ordered by this Court, on or before 5.10.2005.

12. The presence of the Registrar General, High Court of Gujarat may also be required for

proper implementation of above referred directions or other directions which may be issued by this Court, since certain directions pertain to the concerned District Judge, where the jail is situated. Hence, Registrar General, High Court of Gujarat is added as party Respondent. Office to serve copy of this order to the Registrar General of High Court of Gujarat, calling upon him to submit his report, in case, there is any practical difficulty in implementation of the aforesaid directions by the learned District Judges concerned.

*13. **S.O., to 6.10.2005** for final direction and for order of the compliance for such directions.*

14. Office to give a copy of this order to Mr.Nagarkar, learned Counsel for the petitioner as well as to the Office of Public Prosecutor."

2.Thereafter, it appears that the affidavit is filed by the Secretary of Home Department (Jails) as well as the affidavit-in-reply is also filed by the Registrar General of the Gujarat High Court, and today during the

course of the hearing, Mr.Pardiwala, learned Counsel appearing for the Registrar General of the High Court has also placed on record the further report, incorporating the comments/responses of the District Judges concerning to the difficulty which may be faced in implementation of the directions, if any.

3. I have heard Mr.Nagarkar, learned Counsel for the petitioner, Mr.A.D.Oza, learned P.P., with Mr.Kogje, learned APP for the State, Mr.Pardiwala, learned Counsel for the Registrar General of the High Court and Mr.Bushan Oza, learned Counsel for the applicant in Misc. Criminal Application No.12429 of 2005.

4. It would be more convenient to deal with the matter direction-wise as indicated and reproduced in the earlier paragraphs and to record the reasons and also to make additions/alterations whenever it is found proper to that extent by this Court and, therefore, the further order as stated hereinafter.

5. It appears that for directions (a), (b), (c), and (d), there is no serious objection raised and on the contrary it has been stated that the jail manual also provides for separation. However, keeping in view the earlier directions read with direction (e), it has been reported by the State that set up of two hierarchies for under-trial prisoners and convicted prisoners in

all the jails is rather not possible and it has been stated that it would create huge financial implications and it has also been stated that so far as no such set up is prevalent in the jails of the other States of the Country.

6. It appears that once there is a separate classification as under-trial prisoners and convicted prisoners, there is no proper valid reasons to inter-mix the hierarchy for the purpose of administration. Further, if two separate hierarchies are provided, it may be more convenient, not only for administration, but also to fastening the responsibility in the event of any default. It has also been noticed that the services of convicted prisoners are being taken for some time in administration or within the functioning of the jail administration to take care of the under-trial prisoners. If the classes of convicted prisoners for all purposes are segregated with the under-trial prisoners, the same would rather smoothen the administration. In any case, the under-trial prisoners stand altogether on a different footing than the convicted prisoners All under-trial prisoners are in judicial custody and the State, while preserving them in jail in the judicial custody, is required to ensure not only their safety, but it does call for special

care for ensuring that the prisoners are produced before the Court well in time and their custody is reported on each date of the trial. All such special circumstances appear as justifying the separation of hierarchies of under-trial prisoners and convicted prisoners. It is not necessary that in every case, there must be a different officer for taking care of the hierarchy of the under-trial prisoners than that of convicted prisoners, but it may vary from case to case in as much as the State may provide for separate Officer in a case where the number of under-trial prisoners or the convicted prisoners exceeds a particular number, keeping in view the administrative exigencies. However, the accountability of such officer taking care of the under-trial prisoners and the convicted prisoners is required to be defined and classified separately by the State and, in any case, even if one officer is assigned with two duties of taking care of under-trial prisoners and convicted prisoners, in the circumstances, where the number of persons is negligible, his supervisory authority for performance of duties has to be separated. Such hierarchy can at least be separated at the District level Jails and State level. It will be for the State to provide for proper mechanism for implementation of

the directions of separating the hierarchies of under-trial prisoners and convicted prisoners.

7. Even for the classification of the prisoners as indicated in directions (a), (b), (c), and (d), as far as possible, separate compartment shall be provided for preservation of a particular class of the prisoners, subject to the exceptions as provided in direction (e). In a jail if there is no separate compartment or arrangement, it will be for the State to undertake the construction and/or alteration, as may be required for separation/classification for preservation of each category of the prisoners.

8. Hence, subject to the aforesaid observations the directions 10(a), (b), (c), (d), and (e) are confirmed.

9. As such there is no objection raised qua direction 10(f) and (g) in the report of the State. However, it has been stated on behalf of the Registrar General of the High Court that as per the report of the certain District Judges concerned, the Registrars of the District Courts may be authorised to open the complaint boxes. I find that if such power is assigned to the Registrars of the District Courts, it may frustrate the very purpose of the directions since the Registrars of the District Courts are not judicial officers and, therefore, I find that no different view is required to

be taken qua directions 10(f) and (g) and hence, the directions given earlier at para 10(f) and (g) are confirmed.

10.Concerning to direction 10(h) and (i), it appears that in the report of the State Government it has been stated that it would be difficult to get the complaint examined by the Officer of the rank of the Dy. Secretary because of the paucity of time and during the course of the hearing Mr.A.D.Oza, learned PP under the instructions of the Officer of the State Government has submitted that if such work is assigned to either DSP or the Commissioner of Police or Additional I.G. (Prison) or I.G. (Prisons), as the case may be, the State would be agreeable for such purpose. The State has reported for its agreement to direction (i), however, in the report of the learned District Judges, submitted through the Registrar General of the High Court, the apprehension is voiced for separating the investigation by the police and the inquiry by the judicial officer. If the aforesaid aspect is considered, it does appear that this Court is inclined to see that the judicial officer is not cited as witness in the event prosecution is to be launched against the concerned officer of the jail administration for the physical harassment and/or

custodial death, but at the same time, if there is no monitoring whatsoever, of the complaint for physical harassment, by the judicial officer, the purpose of the complaint would be effectively attended and examined. Therefore, considering the facts and circumstances, the directions 10 (h) and (i) shall stand modified as under:

> (h) in case an administrative complaint is received, the same shall be forwarded by the learned District Judge concerned to the concerned Addl. GP (Prisons) or IG (Prisons) of the State Government and after the receipt of the complaint, corrective measures shall be taken by the said Officer of the State Government and the report shall accordingly be made to the learned District Judge within a period of two months from the date of receipt of the said complaint. In absence of any report, it would be open to the learned District Judges to bring it to the notice to the Secretary Home Department, of State Government and if such an intimation is received by the State Government, necessary action shall be directed by the State Government through the Officer not below the rank of the Deputy Secretary, within a period of two months from the date of receipt of such

intimation by the State Government from the learned District Judges concerned.

(i) So far as the complaint for physical harassment is concerned, the learned District Judges shall get inquiry conducted through the concerned Police Officers of the concerned Police Station in which area the jail is situated and the report shall be called for by the learned District Judge within a period of three months from the date of entrusting such inquiry. Copy of such complaint shall also be forwarded to the District Legal Aid Authority for participation at the stage of inquiry, if it is so desired by the concerned prisoner, may be convicted or under-trial prisoner. In the matter of complaint for custodial death inside the jail, immediate action shall be directed by the learned District Judges within 48 hours from the date of receipt of such complaint. It would also be open to the learned District Judges to entrust the inquiry to the Officer not below the rank of Sub-Divisional Magistrate, whom he may find suitable for such purpose.

11. Concerning to the direction (j), as such there is no serious objection coming from any corner, which may

call for modification of the said direction and, therefore, the direction 10(j) stands confirmed.

12. So far as direction 10(k) is concerned, it has been represented on behalf of the Registrar General of the High Court that certain District Judges have expressed their views that such surprise check may not be possible or that the power may also be entrusted to concerned Judicial Officer of the Station concerned, where the jail is situated.

13. It is not possible to conceive the situation where a surprise check cannot be made. So far as the protection aspect is concerned, it deserves consideration and, therefore, the concerned District Judge or the Officer of the rank of Jt. District Judge/Addl. District Judge can take assistance of the concerned Police Officer at the District level or at the station level for ensuring the proper protection when the surprise check is to be effected. Therefore, considering the facts and circumstances, direction 10(k) shall stand modified as under:

> (k) minimum one routine check and one surprise of each jail within the District shall be made by the learned District Judge himself or the Officer not below the rank of Jt. District Judge/Addl. District Judge, who may be nominated for such

purpose by the District Judge. In case the jail is situated at the District Head Quarters. In the event the jail is situated outside the District Head Quarters, such routine check and surprise check shall be made by the concerned Judicial Officer of the Station at which the jail is situated after intimating to the learned District Judge concerned. The concerned District Police Superintendent/Police Commissioner, as the case may be, shall provide sufficient force for protection of District Judge/Jt. District Judge/Addl. District Judge/Judicial Officer, as the case may be, as and when such is requisitioned by such Judicial Officer for effecting the surprise check. It would be for the concerned Judicial Officer or the District Judge or the Joint District Judge, as the case may be, to effect surprise check with the police protection, which shall be provided by the State Government.

14. Concerning to direction 10(l), it has been reported by the State that lenient access by the press/media to the jail may cause some security problem. It has also been stated that in view of the Right to Information Act, 2005 all citizens would be entitled to information regarding prison administration. It has also been

stated that the Press/Media should have limited access, particularly when they have sufficient and solid reasons to have access in the prison. In the report, it has been stated that the learned Sessions Judge may please ensure that while granting permission to press/media, there is no yellow journalism and the jail authority may also be taken into confidence by the learned Sessions Judge while granting permission.

15. On behalf of the Registrar General of the High Court, views expressed by the certain District Judges are placed on record and it has been submitted, inter alia, that considering the present administrative burden, it may not be possible for the learned Principal Judges of the District Courts to look after the grant of permission to the press/media. The apprehension is also voiced for allegations or complications arising thereafter on account of the permission and/or un-authorised information once it is known by the concerned press reporter and, therefore, it has been stated that suitable guidelines may also be incorporated for the eligibility of the press reporter and also for the cases in which the permission should be granted or declined.

16. It appears that even when this Court recorded the reasons earlier when the order was passed on 21.9.2005,

it was observed, inter alia, that access by press/media to jail may disclose the truth and reveal the covering up operations either by the jail administration itself or the prisoners themselves. Therefore, it appears that the access by press/media to the jail would be in the larger public interest. However, the proper care may be required to see that the safety and security of law and order is not jeopardised outside the jail. The situation cannot be created to allow the access by press/media, which may result into easy communication or passing over the information, which otherwise would not have been available to any prisoners, more particularly those who are hardcore criminals or against whom there are allegations concerning to serious offences like POTA, Narcotic Cases, concerning to Anti-National Activities etc. Even those prisoners, who are on account of their past antecedence kept on high security zone may also stand on a different footing, but on account of only such circumstances, qua certain prisoners, who are identified as hardcore criminals facing serious offences, it would be unreasonable to foreclose the access by press inside the jail completely. It may be that the State Government may formulate proper guidelines or the format entitling the press/media to have access inside

jails and particular areas of jail, where the prisoners facing serious offences, as referred to hereinabove or hardcore criminals or the prisoners kept in high security zone, may not be permitted. The State Government while undertaking the aforesaid exercise may also verify the antecedence of any press reporter or the media person when a permission to visit jail is applied. It appears that if the powers for grant of permissions are allowed to be with the learned Principal District Judges, it may not be convenient for them to easily know the antecedence of the press reporter/media persons and/or the repercussions which may follow on account of the grant of permission to press/media for the access inside the jail. This Court is of the view that such can better be verified and looked after by the District Magistrate concerned. The State Government may provide appropriate forum, including the necessary details when permission is to be applied by the press/media for a visit to jail and it may also provide for further guidelines to all District Magistrates concerned, showing the circumstances under which the permission may be granted or declined, including the prohibition of entry in certain areas like high security zone, inside the jail. Even after the visit of the press/media, when the stage

comes for reporting of the same, the said work also can be assigned to the District Magistrates concerned in comparison to the Principal District Judges, since the District Magistrates concerned would be in a position to gather the information pertaining to the repercussions which may arise on account of the reporting and he may also be in a position to verify genuineness of the reporting to some extent after getting the views of the jail administration, but when an application is made for reporting of the information received by the press after the visit, copy of the same should be forwarded to the Principal District Judges concerned, so that in the event even the permission is declined at least the learned District Judge would be in a position to look into the matter and to take appropriate action, in case it is so desired, keeping in view the earlier directions issued by this Court.

17. In view of the above, direction 10(l) shall stand modified as under:

> (l) access by the press/media to the jail shall be permitted after taking permission from the District Magistrate of the concerned District. It would be open to the State Government to issue necessary guidelines to all the District Magistrates of the State for eligibility of the

press reporter, the area of the jail to which the press report may be permitted, where the prisoners are kept, barring certain class of prisoners as referred to hereinabove. Such guidelines may also include the verification by the District Magistrates through the concerned local police/I.B., or in exceptional cases also, through concerned jail administration.

(1-A)In a matter where during the visit by press any serious infirmities are detected by the press, the reporting thereof shall be made by the press to the learned District Magistrates as well as to the learned Principal District Judges and after getting permission from the learned District Magistrates, the press shall be at liberty to publish the said material. It would be also open to the State Government to issue necessary guidelines to all District Magistrates of the State providing circumstances under which the permission for publication should be granted and the circumstances under which the permission for publication may not be granted by the District Magistrates concerned. However, it is clarified that such guidelines which may be issued by the State Government to the District Magistrates

concerned shall not operate as a bar to the learned Principal District Judges in taking appropriate action on the basis of the report received by them from the press/media. The learned Principal District Judges who may receive such report or information, shall also look into the matter and, if it is brought to his/their notice that some serious infirmities are reported inside the jail which is required to be remedied immediately, the learned Principal District Judges shall take action at the earliest as may be permissible in law.

18. It has also been submitted on behalf of the State during the course of hearing that certain under-trial prisoners facing trial for petty offences like prohibition cases, accident cases, etc., are kept inside the jail due to either their poor financial conditions or their inability to engage lawyers or they are not well educated in taking proper recourse to law. I am of the view that such class of prisoners or under-trial prisoners can better be rendered assistance through the State Legal Aid Authority and the District Legal Aid Authority. As such as per the provisions of “The Legal Services Authorities Act, 1987 (No.39 of 1987), certain class of litigants are even otherwise

entitled to free of charge of legal aids including for engaging the lawyer. Therefore, it would be for the concerned Legal Aid Authority, may be at the State level or at the District level or at the Taluka level to hold legal literacy camp, even inside the prison, amongst the prisoners, and if it is so desired by the concerned prisoner, the legal assistance may be rendered including for engaging the lawyer and for pursuing the matter before the appropriate Court, keeping in view that such prisoners, due to their inability or poor financial conditions or illiteracy are not required to remain in jail, more particularly when they are facing trial of petty offences like prohibition cases, accident cases, etc. Therefore, office shall forward a copy of this order to the Secretary, State Legal Aid Authority for taking necessary action in this regard. Hence directed accordingly.

19.It appears that during the course of hearing it has also come on record through the Registrar General of the High Court that the High Court on administrative side has already issued circular earlier for jail visit to all the District and Sessions Judges of the State and such circular came to be issued on October 5, 1981 and the said circular was issued in view of the

judgement delivered by the Apex Court in case of “D. Bhuvan Mohan Patnaik and Others v. State of Andhra Pradesh and Others” reported in AIR 1974 SC, 2092, in “Charles Sobraj v. Supdt. Central Jail, Tihar, New Delhi”, reported in AIR 1978 SC, 1514 and in “Sunil Batra v. Delhi Administration”, reported in AIR 1980 SC, 1579. However, from the responses received from the concerned District Judges, it appears that while jail visit, there is no strict compliance to the said circular. It hardly requires to be observed that the circular issued by the High Court on administrative side is binding to all the District and Sessions Judges of the State. Therefore, it deserves to be added that the concerned District Judges/Jt. Judges/Addl. Judges/Judicial Officer shall take into consideration the circular issued by this Court on administrative side on October 5, 1981 while making routine jail visit and shall ensure that the said circular is applied and implemented in its true spirit.

20. Special Criminal Application No.1044 of 2005 shall stand disposed off in terms of the aforesaid directions. It is further directed that the compliance report shall be submitted by the State Government within period of six months from today.

In view of the order passed in the main Special

Criminal Application, no further orders are required to be passed in the Criminal Misc. Application. It may be recorded that during the course of the hearing I have heard Mr.Oza, learned Counsel for the applicant for finalization of the directions. However, when the Court was in the midst of the dictation he submitted before the Court that the applicant is now desirous to withdraw the application. As such, the said withdrawal does not make any consequence, but when the hearing is concluded and the Court is in the midst of dictation, such prayer can not be entertained.

21. Hence, the application is disposed of with no orders in view of the order passed in the main Special Civil Application.

19.10.2005 **(Jayant Patel, J.)**

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